

BEFORE THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In Re: Appeal by

SAFE AND AFFORDABLE SEATTLE, a nonprofit corporation, and

MAGNOLIA NEIGHBORHOOD PLANNING COUNCIL, a nonprofit corporation, and

ELIZABETH A. CAMPBELL, an individual

Of the CITY OF SEATTLE, DETERMINATION OF NON-SIGNIFICANCE OF AMENDMENTS TO THE LAND USE CODE TO MODIFY DEVELOPMENT STANDARDS FOR TRANSITIONAL ENCAMPMENTS AND INCREASE THE MAXIMUM NUMBER OF AUTHORIZED INTERIM USE ENCAMPMENTS (PURSUANT TO SMC 25.05.340 AND WAC 197-11-340).

NO.

NOTICE OF APPEAL

**I. INTRODUCTION**

1. Appellant Safe and Affordable Seattle (SAAS) is an alliance of people and organizational interests that altogether represent Seattle business owners and residents who will be significantly and adversely impacted by the proposed City of Seattle's amendments to the land use code as outlined in the Determination of Non-significance of the amendments to the land use code, to wit, to "Modify Development Standards for Transitional Encampments and Increase the Maximum Number of Authorized Interim Use Encampments".

2. Appellant Magnolia Neighborhood Planning Council (MNPC) is an alliance of people and organizational interests that altogether represent Magnolia, Interbay, and Fishermen's Terminal business owners and residents who will be significantly and adversely impacted by the proposed City of Seattle's amendments to the land use code as outlined in the Determination of Non-significance of the amendments to the land use code, to wit, to "Modify

1 Development Standards for Transitional Encampments and Increase the Maximum Number of  
2 Authorized Interim Use Encampments”.

3 3. Appellant Elizabeth Campbell is a resident of Seattle who will be significantly and  
4 adversely impacted by the proposed City of Seattle’s amendments to the land use code as  
5 outlined in the Determination of Non-significance of the amendments to the land use code, to  
6 wit, to “Modify Development Standards for Transitional Encampments and Increase the  
7 Maximum Number of Authorized Interim Use Encampments”.

8 4. The obvious and unintended consequences of the amendments are that the City of  
9 Seattle in concert and collaboration with others will significantly expand the number of  
10 transitional encampments in Seattle, to an in excess amount of at least 40 encampments, by  
11 *one*, authorizing them to be located without restriction or consideration of a location’s a) land  
12 use zone, b) historic district designation, c) urban village and related designation, d) shoreline  
13 zone, d) environmental critical areas zone, e) industrial zone, or any other land use plan,  
14 designation, zone, or other qualification, *two*, siting them within close proximity to one another  
15 *and* without regard for other uses in close proximity including but not limited to allowing  
16 encampments to be sited next to preschools, schools (public/private and residences (houses,  
17 apartments, townhomes and the like), stores and shops selling alcoholic beverages and  
18 intoxicating substances, *three*, allowing an unlimited number of encampments on any land held  
19 or claimed to be controlled by a religious organization (whether constructively or on a contrived  
20 basis, and without benefit of any obligation on the part of the religious organization or its  
21 proxies to comply the City’s land use, environmental, or other property/project controls, and by  
22 *four*, allowing any transitional encampment to occupy a location in perpetuity.

## 23 **II. APPELLANT INFORMATION**

### 24 **1. Appellant #1**

25 Name: Safe and Affordable Seattle (SAAS)  
26 Address: 4027 21<sup>st</sup> Avenue West Suite 206  
Seattle, WA 98199  
Phone: 206.769.8459  
Email: safeseattlebuzz@gmail.com

I wish to receive documents from the Office of the Hearing Examiner by  
Email Attachment.

### 27 **2. Appellant #2**

28 Name: Magnolia Neighborhood Planning Council (MNPC)  
29 Address: 4027 21<sup>st</sup> Avenue West Suite 206  
30 Seattle, WA 98199  
31 Phone: 206.769.8459  
32 Email: magnoliaplan@gmail.com

I wish to receive documents from the Office of the Hearing Examiner by

Email Attachment.

### 3. Appellant #3

Name: Elizabeth A. Campbell (Campbell)  
Address: 4027 21<sup>st</sup> Avenue West Suite 206  
Seattle, WA 98199  
Phone: 206.769.8459  
Email: neighborhoodwarrior@gmail.com

I wish to receive documents from the Office of the Hearing Examiner by  
Email Attachment.

### III. DECISION BEING APPEALED

1. **Decision Appealed:** SAAS, MNPC, and Campbell are appealing the City of Seattle Seattle City Council's/Legislative Department's Determination of Non-Significance for Amendments to the Land Use Code to Modify Development Standards for Transitional Encampments and Increase the Maximum Number of Authorized Interim Use Encampments (Pursuant to SMEC 25.05.340 and WAC 197-11-340), hereinafter "the DNS", challenging the adequacy of the analysis underlying the SEPA DNS, that it is in large part predicated upon false or misleading information about transitional encampments, about the history of the existing code that would be amended by the City Council's proposed amendments, that it relies upon a constructed narrative or upon omissions of fact in order to support the multiple and clearly erroneous statements and conclusions in the underlying SEPA checklist upon which the DNS is based.

2. **Property address of Decision being appealed [Applicant Address]:** The geographic area that would be affected by the amendments proposed in the ordinance is all land within the City of Seattle's municipal boundaries.

Seattle City Council  
600 Fourth Avenue – 2<sup>nd</sup> Floor  
P.O. Box 34025  
Seattle, WA. 98104  
206-684-8888

3. **Elements of decision being appealed.** Check one or more as appropriate:

<input checked="" type="checkbox"/> Adequacy of Conditions	<input checked="" type="checkbox"/> Other (specify: <u>DNS</u> )
<input type="checkbox"/> Design Review and Departure	<input type="checkbox"/> Variance (Departures)
<input type="checkbox"/> Conditional Use	<input type="checkbox"/> Adequacy of EIS
<input checked="" type="checkbox"/> EIS not required	<input type="checkbox"/> Interpretation (See SMC 23.88.020)
<input type="checkbox"/> Major Institution Master Plan	<input type="checkbox"/> Short Plat
	<input type="checkbox"/> Rezone

#### IV. APPEAL INFORMATION

**1. What is your interest in this decision: (State how you are affected by it)**

Appellants Safe and Affordable Seattle (SAAS) and Magnolia Neighborhood planning council are membership based groups, alliances of people, business owners and operators and organizational interests that altogether represent Seattle business owners and residents who will be significantly and adversely impacted by the proposed City of Seattle proposal to establish an unlimited number of permanent transitional encampments in Seattle.

Appellant Elizabeth Campbell is a neighborhood activist who will be significantly and adversely impacted by the proposed City of Seattle proposal to establish an unlimited number of permanent transitional encampments in Seattle.

**2. What are your objections to the decision? (List and describe what you believe to be the errors, omissions, or other problems with this decision.)**

The Seattle City Council's determination that there will be no significant impacts from the amendments proposed to SMC 23.40.002, 23.42.054, 23.42.056, 23.76.004, 23.76.006, 23.84A.038, AND SUBSECTION 23.76.032.C is adequate, was made in error, is outright false, misleading, or contains substantial omissions of fact, and was made in violation of the State Environmental Policy Act (SEPA), RCW 43.21C, for the following reasons:

1. The SEPA Checklist has been completed without accuracy. Appellants recognize that a typical SEPA checklist often addresses one specific project; however in this case the checklist herein is analyzing and making conclusions about the potential environmental impacts of a proposed, significant city-wide land use code change, a non-project action. The checklist has been completed under the mistaken assumption that because no singular project is defined therefore no environmental impacts can be identified.

However, one can easily associate scores of considerable and significant environmental impacts from the resultant proliferation of transitional encampments the amendments would authorize, at least 40 transitional encampments on up to an unlimited number of encampments in Seattle, which require new on and offsite infrastructure to sustain, the impacts from potentially thousands of newly minted camp residents being housed in closely located, illegal housing structures, in a wide variety of settings – industrial, residential, open space, educational, business, recreational, park, shoreline, religious, historic, entertainment land use zones; and the concomitant phalanx of “camp followers” that do and will gather around each transitional encampment, itinerant individuals who eschew regulated living arrangements, purveyors of a variety of goods and services uniquely curated to serve the interests of a large number of encampment residents, and the now ubiquitous and significant impacts to the community hosting the encampment, the impact on the health and safety of the community, its businesses and residents, the lands surrounding the encampment, and even the disruption of commerce in the location where a transitional encampment is located.

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2. Appellants object that almost every SEPA Checklist question for the proposed legislation is answered with “Not Applicable”, “No”, “None”, or that some City of Seattle ordinance or, that some law or regulation, all unspecified, will in the alternative cure any possible environmental impact – i.e. that through the operation of the City’s codes there can be no impact that cannot be cured by operation of law.

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It is dismissive and inaccurate for the City Council’s agents to suggest that because the proposal is a “non-project action” that there are no foreseeable and clearly identifiable environmental impacts from this proposed legislation. To deny such takes away the public’s right to review, comment upon, share its viewpoints on, and to help identify the significant number of real and definable environmental impacts associated with an approval of the transitional encampment code amendments.

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And frankly, the whole no significant environmental impacts, or impacts even in general coupled with the City’s claims that its laws and regulations are what will ensure that no impacts will exist or will be mitigated is disingenuous at best; for example its claims in the checklist that no encampments will be located in an environmentally critical area (ECA) – when three have been, (Tent City V (located in two different ECA locations and Othello); and that the two still are in ECA locations.

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Or the multiple claims in the Checklist that the City or a project proponent will carry out any environmental reviews when required – when the well documented practice has been to carry out environmental reviews after the encampment has been established, Low Income Housing Institute (Othello), or to avoid environmental review by artificially claiming the encampment is below the threshold for requiring SEPA review, 1601 15<sup>th</sup> Avenue West encampment; or exempting an encampment from SEPA review on the basis that the City of Seattle Emergency Declaration exempts such compliance (LIHI – Licton Springs); it does not.

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In recent major land use code amendments, related the the Mandatory Housing and Affordability, South Lake Union and Uptown, Accessory Dwelling Unit rezone legislation for example, there was no question that each of those city council actions while “non-project actions” there were environmental impacts that needed expert study, public engagement, and a full environmental impact statement.

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The SEPA checklist herein asks dozens of questions about environmental impacts related to, including but not limited to:

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- Pending government approvals
  - Surface water and drainage impacts
  - Plants and open space impacts
  - Land use changes and impacts
  - Comprehensive plan and density impacts
  - Housing unit numbers and neighborhood impacts

- Aesthetics impacts
- Recreational, open space and park impacts
- Displacement impacts
- Historical and cultural preservation impacts
- Public services impacts – including police, fire, and social service impacts

To every one of these potential significant impacts the City has claimed that the proposed legislation once in operation will have absolutely no environmental impacts, or in the alternative that by operation of law the City's laws and regulations will prevent or cure any impact. The falsity of those claims cannot be overstated given that with nine existing transitional encampments now in operation, the majority of which have been in operation for the better part of some four years, and the multiple and very public record about those encampments causing a variety of and substantial impacts to the environments and neighborhoods in which they exist, it is disingenuous at best for the City to claim that there will be no environmental impacts from an at least ten fold increase in the number of transitional encampments.

3. SMC 25.05.926 Lead Agency for governmental Proposals at Section B requires, "Whenever possible, agency people carrying out SEPA procedures should be different from agency people making the proposal." The City of Seattle/Legislative Department is a large enough organization that it easily could have assigned other personnel to do the SEPA Checklist review. Both of the legislative staff involved with preparing the Checklist and the DNS for the proposed legislation, Ketil Freeman (Threshold Determination/Responsible Official) and Eric McConaghy (SEPA Checklist Preparer/Legislative Analyst – Seattle City Council Central Staff) have a documented history of crafting not only official documents but self-serving master narratives about why or how the City of Seattle in general and certain departments in particular, in this case, the City Council, the Department of Housing, and the Seattle Department of Construction & Inspections can circumvent or entirely ignore or not comply with City and State law which governs the land use, building codes, landlord tenant, and human rights laws associated with the transitional encampments the City has already authorized, operates, funds, and otherwise commits resources to.
4. The City claims in the checklist that the only legal changes that will be required are those associated with the amendments to the Seattle Municipal Code however it also acknowledges that these sweeping transitional encampment zoning amendments will create inconsistencies with the Comprehensive Plan, but denies that the Comprehensive Plan will need to be amended. This is untrue.
5. The City failed to identify specific transitional encampment locations that are known, already established, that would be affected by the proposed legislation; it failed to name and evaluate them for any environmental impacts.
6. The proposed legislation will:
  - a. Usurp the rights of the public to exercise its democratic rights, weigh-in, have oversight over, and require any kind of accountability related to the City's land

1 use decision and social programs that are inextricably intertwined with  
2 transitional encampments; and

- 3 b. By fiat impermissibly authorize the continued construction of “tiny houses” that  
4 are legally, by state and city law, their building codes nothing more than garden  
5 sheds, that are illegal for any kind of residential use; and  
6 c. Impermissibly lend or give the City’s credit, money, or property to aid an  
7 individual, association, or corporation (Washington State Constitution Article  
8 VIII, section 7); and  
9 d. Gives preferential treatment to religious organizations in order to establish  
10 transitional encampments that will not require environmental and land use  
11 review, without benefit of any permitting by the City (which includes not having  
12 to pay any fees to the City). Under the proposed legislation the City intends to  
13 fund religious organizations because of the religious character, or organizations  
14 because of their religious affiliations; intends to set aside a particular portion of  
15 funds for them.

16 The SEPA Checklist failed to disclose or analyze any of the above impacts that would  
17 result from the amendments to the Seattle Municipal Code being passed by the Seattle City  
18 Council.

## 19 V. RELIEF REQUESTED

20 **What relief do you want? (Specify what you want the Examiner to do: reverse the decision,  
21 modify conditions, etc.)**

22 Appellants request that the Hearing Examiner remand the DNS back to the City of Seattle  
23 with instructions to:

24 1. Reverse and remand the DNS back to the City Council and require that it be prepared  
25 on the basis of verifiable analysis that includes professional and expert analysis with provable  
26 metrics and design and land use parameters, and proper unbiased government review.

2. Prepare an environmental impact statement as necessary to adequately address the  
myriad of deficiencies itemized above in this Notice of Appeal and other deficiencies.

27 Filed on behalf of the *Safe and Affordable Seattle* on this 29<sup>th</sup> day of August, 2019.

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29 Elizabeth A. Campbell, MPA  
30 Founder and Director of Safe and Affordable Seattle

31 Filed on behalf of the *Magnolia Neighborhood Planning Council* on this 29<sup>th</sup> day of  
32 August, 2019.

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3 Elizabeth A. Campbell, MPA  
4 Founder and Director of Safe and Affordable Seattle

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6 Filed on behalf of *Elizabeth A. Campbell* on this 29<sup>th</sup> day of August, 2019.

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8 Elizabeth A. Campbell, MPA  
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